

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

FILED  
ROCK ISLAND, IL

04 AUG 16 PM 3:22

JOHN A BROWNER

Plaintiff

v.

CHARLES RUHL JR. et al

Defendants

) CASE NO 3:04-CV-40035  
)  
) RESISTANCE TO MOTION FOR  
) SANCTIONS FILED BY  
) Charles Ruhl Jr. and Ruhl Development  
) and Ruhl and Ruhl Realtors, and  
) Cavity Company LLC and Kaizen  
) Company of America L.C. and Caroline  
) Ruhl, and Curtis E. Beason, Michael  
) Byrne, Lane and Waterman, R. Clay  
) Thompson, Kent M. Pilcher

COMES NOW John A. Browner pro se hereby file his resistance to above defendants motion for sanctions under federal rule of civil procedures 11 and states as follows.

1. Under federal rules of procedure 11 (B)
2. These defendants are clearly requesting sanctions to harass plaintiff.
3. Clearly defendants has violated plaintiff right to due process and a fair trial in the Iowa district courts by undue 18USC1961 racketeer influenced and corrupt organizations (1) (3) (6).
4. On or about January 28, 1998 plaintiff was given an order by Judge Edward B. deSilva Jr. for a settlement conference for February 13, 1998 an order and Judge deSilva Jr. signed the document in front of plaintiff with a signature see exhibit #36 plaintiff has just found out by the clerk of the district court of State of Iowa this signature matches Judge deSilva Jr. signature.
5. Plaintiff challenges the signature on defendants exhibit B ruling dated 02.03/1998 as not being the signature of judge deSilva Jr case #91476

6. Plaintiff appealed the ruling on case #91020 dated 02./03/1998 and it appears by the record the signature of deSilvia jr. does not match the signature affixed to this ruling in case #91020 defendants failed to present this document before this court it shows the signatures are completely different. see exhibit 35

7. This dispute has to be worked out in discovery process to determine which signature is the correct signature of judge deSilva jr. plaintiff has just found out about the different signatures.

8. Clearly the case #91476 was commence by the demand of Charles Ruhl Jr. and Kent M. Pilcher and Cavity Company LLC and Kaizen Company of America L.C. for action to enforcement of mechanic lien on Lot 5 and 6 46 Street 2nd Addition to the City of Davenport Iowa by Iowa Code 572.28 , Iowa Code 572.26 states no other cause of action shall be joined with a action for mechanic lien. see exhibit 37 exhibit \_\_\_\_\_

9. The mechanic lien was on Lot 5 and 6 46 Street 2nd Addition to the City of Davenport Iowa for the amount of \$210,000.00 see exhibit 38

10. Defendants Charles Ruhl Jr. and Kent M. Pilcher and Cavity Company LLC and Kaizen Company of America L.C. filed a motion to dismiss the mechanic lien the motion was denied on December 3, 1997, the judge did dismiss Charles Ruhl Jr. and Kent M. Pilcher in this case #91476 see exhibit 34 - exhibit 39

11. In violation of Iowa Code 572.26 defendants Charles Ruhl Jr. and Kent M. Pilcher and Cavity Company LLC and Curtis E. Beason a partner of Kaizen Company of America L.C. and Kaizen Company of America L.C. illegal changed

the subject matter and cause of action in case #91476 Browner DDS sold the property at 4508 to Kaizen this is clearly false Browner DDS did not have any sale of 4508 Brady Street to Kaizen nor Cavity. This leaves plaintiff to believe there is a forged signature of judge deSilva jr. on the case #91476, which can be proven in discovery process. The signature on case #91020 is totally different from the other two signatures.

12. Small claims action case No. SC12531 clearly is for \$1000.00 earnest money held in Ruhl and Ruhl Realtors trust account paid by Ruhl Development per written contract see 42807. small claims limitations and jurisdiction in Iowa is \$5000.00 the ruling by judge Toby small claims judge is clearly frivolous and fraudulent in case no SC12531 this is defendants Charles Ruhl jr. and Ruhl and Ruhl Realtors trying get out of the written agreement #42087 the mechanic liens amount is \$210,000.00 which is above the jurisdiction of Iowa small claims. *EXHIBIT # 46*

As the small claims actions in case #12531 has nothing to do with a mechanic lien of \$210,000.00 rightful claim for plaintiff share of earnest money of \$1000.00 #42087.

13. 42USC 1981 and 42USC1982 plaintiff has the rights as white citizen to enforce written contracts the court through undue influence by defendants has denied plaintiff this right through federal civil rights and racketeer influence and corrupt organizations 18USC1961 (1) (3) (5) (6).

14. Cavity Company LLC was formed by Charles Ruhl Jr. *show* to held the illegal activities of Kaizen Company of America and Ruhl and Ruhl Realtors Inc. and Curtis E. Beason and Charles Ruhl Jr. and Kent M. Pilcher Caroline Ruhl and Mary Ruhl.

Cavity Company LLC has done no other business discovery process will show.

15. Defendants Charles Ruhl Jr. for Ruhl Development has stated he has not closed the purchase agreement he made a offer to close, which has never materialized.

16. There clearly was no check for \$225,000.00 this is fraud upon the court let defendant produce a check for \$224,000.00 a \$1000.00 earnest money is still being held in Ruhl and Ruhl Trust account the agreement was for 1031 exchange #42087.

16. All defendants did was has have Shives-Hattery illegally included plaintiff and his wife real property Lot 1 in Dardis Addition to the City of Davenport Iowa with their real property change the boundaries lines without ownership of Lot 1 in Dardis Addition to the City of Davenport Iowa and sold the stolen real property Lot 1 in Dardis Addition to the City of Davenport cross state lines to QCR Holding Company Moline Ill.

15USC1717 and 15USC1719 Chapter 42 and 15USC1717a 15USC1708

#### CONCLUSION

In case no 91476 defendants Charles Ruhl Jr. and Kent M. Pilcher and Cavity company LLC and Kaizen Company of America L.C. clearly demanded by Iowa code 572.28 plaintiff to commence action to enforce his mechanic liens on Lot 5 and 6 46 Street 2nd Addition to the City of Davenport Iowa in 30 days or his mechanic liens would be forfeited.

Case No 91467 was assigned for the action to enforce plaintiff mechanic liens of \$210,000.00. Iowa code 572.26 no other action shall be joined with mechanic lien therewith.

Defendants Charles Ruhl Jr. and Kent M. Pilcher and Cavity/Kaizen filed a motion to dismiss the mechanic's liens there motion to dismiss, the court dismiss Charles Ruhl Jr. and Kent M. Pilcher from the action, but the court denied Kaizen/Cavity motion to

dismiss.

Defendants Kaizen/Cavity filed to further litigate the mechanic's lien the \$210,000.00 went to judgment for the amount of \$210,000.00.

There was no contract with Kaizen Company of America written or oral with Browner DDS to sell 4508 Brady Street, legal Lot 1 in Dardis Addition to the City of Davenport Iowa to sell to Kaizen.

Since plaintiff was pro se to enforce his mechanic lien in case No 91476 tried to have court enforce a fraudulent enforceable some kind of illegal deal, which plaintiff allege and believe defendants agents or attorney wrote the rulings in case #91020 and case #91476 they or their agents illegal signed judge Edward B. deSilva jr. name on the rulings. Which has be decided in discovery process.

In small claims actions case No SC 12531 the court in case #91476 dismiss Charles Ruhl jr. and Kent M. Pilcher from that case.

Per written agreement #42087 Charles Ruhl Jr. stated he deposited \$1000.00 earnest money in Ruhl and Ruhl Trust account on October 5, 1994 the written agreement #42087 has never closed therefore there must be an accounting of the earnest Money of \$1000.00 clearly the small claims action states earnest Money of \$1000.00 the action does not state \$210,000.00 mechanic lien.

Defendants motion for sanctions is just to harass plaintiff, under the due process clause of the U.S constitution. Plaintiff is asking for a injunction against defendants further acts to steal plaintiff real property.

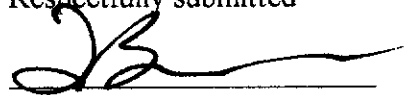
The Fourteenth amendment give plaintiff equal protection under the law which plaintiff

has been denied.

Plaintiff has the right to protect his property just as white citizens which has been denied.

WHEREFORE John A. Browner pro se request the court to deny the above defendants motion for sanctions for all the reason stated above, and an injunction from further acts, and make plaintiff whole returning his real property Lot 1 in Dardis Addition to the City of Davenport Iowa, which is being held in illegal adverse possession by defendants.

Respectfully submitted



John A. Browner pro se  
308 A West 52nd Street  
Davenport Iowa 52806  
563 386 3879

**Copies t**

Lane and Waterman  
220 N. Main Street  
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Davenport Iowa 52801  
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and Stanley, Lande & Hunter  
900 U.S. Bank Center  
Davenport Iowa 52801

Thomas D. Warner  
City Attorney  
226 W. 4th Street  
Davenport Iowa 52801

proof of service  
the undersigned hereby certifies that a copy  
of the instrument was served upon all attorneys  
of record and all other parties aboved case  
there address in the pleading US Mail

August 17, 2004



IN THE DISTRICT COURT IN AND FOR SCOTT COUNTY

Case No. 07821 LNLN010635

DEMAND FOR BRINGING SUIT

TO: Mr. John Anthony Browner  
308-A West 52nd Street  
Davenport, IA 52806

Demand is hereby made, pursuant to Iowa Code Section 572.28, for you to commence action to enforce the following Mechanic's Lien recently filed in the office of the Scott County Clerk of Court: Case No. 07821 LNLN010635.

Please be advised that your failure to bring such action to enforce these liens within thirty (30) days of service of this notice will result in the lien and all benefits derived therefrom to be forfeited.

LANE & WATERMAN

By R. Clay Thompson 14120  
Attorneys for Charles Ruhl, Jr.,  
Kaizen Company of America, L.C.,  
and Cavity Company, L.C.

Of Counsel:

LANE & WATERMAN  
220 N. Main Street  
Suite 600  
Davenport, IA 52801  
(319) 324-3246



LN 10635

## MECHANIC'S LIEN (Sec. 572.8)

STATE OF IOWA, SCOTT COUNTY, ss:

FILED

I, the undersigned affiant, [who is JOHN A. Browner (manager, bookkeeper, etc.) (or) the Claimant] being duly sworn, depose and say that the following statement is true to the best of my knowledge and belief is made of my personal knowledge by reason of the relationship of JOHN A. Browner to CHARLES BLUNT JR. CLERK OF DISTRICT COURT, SCOTT COUNTY, IOWA.

That, on the dates set forth in Exhibit "A" hereof, JOHN A. Browner (Name of person, firm or corporation furnishing material or labor), herein, referred to as the Claimant, furnished material or labor for, or performed labor upon, the building or land for improvement, alteration, or repair thereof, situated upon, or being identical with the following described real estate in DAVENPORT, IOWA County, Iowa, to-wit:

4425 WELCOME WAY DAVENPORT, IOWA 52801  
LOTS 5 and 6 46 ADDITION CITY OF DAVENPORT  
IOWA 52807

That said items were furnished pursuant to a contract made by the then Owner of said premises, and were furnished by said Claimant who is (1) a contractor, (2) a subcontractor thereunder. That said items were furnished beginning the 28 day MAY, 1995, and ending on the 13 day of MAY, 1997, all as specified in said statement or account hereto attached, marked Exhibit "A" and by this reference made part hereof; and at the respective dates, amounts and prices therein stated, which said account is a true and just statement for the same, after allowing all credits and offsets thereon.

That Charles Blunt Jr. was then and OWNER OF ABS GUS (address) 130 W 2nd STREET DAVENPORT IOWA 52801 is now the owner of said real estate and that there is now due and owing to the said Claimant the principal sum of \$210,000 with interest thereon at 10 % per annum from and after the 13 day of MAY 1997, for which sum and interest, together with costs as provided by law, said Claimant asserts a Mechanic's Lien against said improvement and the above described real estate upon which the same is situated.

John A. Browner

Affiant

Acting for

Claimant

Subscribed in my presence and sworn to before me by the above named Affiant this 21 day of July, 1997.

ATTACH EXHIBIT "A"

Wendy Kraft  
 Notary Public in and for said County

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

JOHN A. BROWNER,

Plaintiff,

v.

CHARLES A. RUHL, JR., KENT M.  
PILCHER, CAVITY COMPANY,  
L.C., and KAIZEN COMPANY OF  
AMERICA, L.C.

Defendants.

CASE NO. 91476

MOTION TO DISMISS

FILED  
97 OCT 24 PM 2  
CLERK OF DISTRICT COURT  
SCOTT COUNTY, IOWA

DEFENDANTS, Charles A. Ruhl, Jr., Kent M. Pilcher, Cavity Company, L.C. ("Cavity"), and Kaizen Company of America, L.C. ("Kaizen"), hereby move to Dismiss Plaintiff's Petition and state as follows:

1. Plaintiff has filed this cause of action against these Defendants regarding a Real Estate Contract which Plaintiffs attaches to his Petition, together with numerous other documents. ("Browner II").

2. Previously, on May 29, 1997, Plaintiff filed a lawsuit in this same Court regarding the same Real Estate Contract against Defendants, Cavity and Kaizen. Scott County No. 91020 ("Browner I").

3. Moreover, on July 3, 1997, this Court forfeited Browner's interest in the same real estate contract which is the subject of both, Browner I and II. (F.B.D. action).

*Plaintiff's*

Exhibit 39

4. The Court in Browner I granted Kaizen and Cavity Summary Judgment with respect to Plaintiff's attempt to declare the forfeiture of the contract invalid, finding that it has previously been decided in the F.E.D. action SC94901.

5. Browner I involves the same real estate transaction of which Plaintiff now complains in Browner II.

RES JUDICATA

6. Browner II seeks money damages from Cavity, Kaizen, Charles Ruhl, Jr. and Kent M. Pilcher relating to the same contract and real estate transaction which is the subject of Browner I.

7. The new Petition (Browner II) against Kaizen and Cavity is barred under the doctrine of claim preclusion and should be dismissed for failure to state a claim on which relief can be granted pursuant to I.R.C.P. 104(b).

DISMISSAL OF MECHANIC'S LIEN

8. Plaintiff attaches two Mechanic's Liens as Exhibits to his Petition: LN10635 and LN10637.

9. These Mechanic's Liens relate to the same real estate transaction and were filed after the Court's July 3, 1997 Order forfeiting his interest in the property. F.E.D. action SC94901.

10. Plaintiffs held an equity interest in the property until this Court's July 3, 1997 Order. F.E.D. action SC94901.

11. Plaintiffs cannot claim a Mechanics Lien in property in which he was the owner. Further, any such claim would be merged into the July 3, 1997 F.E.D. Order. Plaintiff cannot claim such liens after the Court has forfeited his interest.

NO PERSONAL LIABILITY

12. Plaintiff has attached to his Petition, a Real Estate Contract between Plaintiff and Kaizen. Mr. Pilcher signed the agreement in his capacity as Manger of Kaizen, not in his individual capacity.

13. Plaintiff's Petition does not allege any basis for personal liability of Mr. Pilcher.

14. Further, Plaintiff attached an agreement between himself and Ruhl Development Company, L.L.C. Mr. Ruhl signed in his capacity as President of Ruhl Development and not in his individual capacity.

15. Plaintiff's Petition does not allege any basis for personal liability of Mr. Ruhl.

16. Plaintiff's Petition fails to sufficiently allege a cause of action against any Defendant.

WHEREFORE, Defendants, Charles A. Ruhl, Jr., Kent M. Pilcher, Cavity Company, L.C. and Kaizen Company of America, L.C. respectfully request that the Court enter an Order expressly declaring Plaintiff's Mechanics liens (Case No. 07821 LN01635 and LN01637) to be invalid and without any claim to the property and to dismiss Plaintiff's suit in its entirety.

LANE & WATERMAN

By

Michael P. Byrne  
Michael P. Byrne

08910

220 N. Main Street

Suite 600

Davenport, IA 52801

(319) 324-3246

Attorneys for Defendants  
Charles A. Ruhl, Jr., Kent M.  
Pilcher, Cavity Company, L.C. and  
Kaizen Company of America, L.C.

Copy to:

John A. Browner  
308 West 52nd Street  
Davenport, IA 52807

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on October 26, 1997.

By: ☒ U.S. Mail ☐ FAX  
☐ Hand Delivered ☐ UPS  
☐ Federal Express ☐ Other

Signature

Eileen Heier

IN THE IOWA DISTRICT COURT FOR

97 DEC -3 AM 10:27

COUNTY

John A. Browner

Plaintiff/Petitioner,

Charles Ruhl Jr et al

Defendant/Respondent.

[ ] Equity  
[ ] Criminal  
[x] Law

No.

91476

[x] ORDER  
[ ] RULING  
[ ] JUDGMENT

The court heard argument on the motion to dismiss filed by defendants.

As to the individual defendants Charles Ruhl and Kent Pilcher the petition with attachments show they were agents only of the other defendants, & such they are hereby dismissed as defendants in this case.

The remainder of the motion requiring the consideration of evidence which cannot be done on a Motion to Dismiss. The motion is denied as to the other defendants.

The clerk shall notify all counsel of record and any party represented by counsel.

Dated

Dec. 3, 19

Judge of the Seventh Judicial District of Iowa

[ExH.b. + 34]

## **572.26 Kinds of action -- amendment.**

An action to enforce a mechanic's lien shall be by equitable proceedings, and no other cause of action shall be joined therewith.

Any lien statement may be amended by leave of court in furtherance of justice, except as to the amount demanded.

### **Section History: Early form**

[C51, § 985; R60, § 4183; C73, § 2510; C97, § 3429; C24, 27, 31, 35, 39, § 10295; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 572.26]

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Previous Section [572.25](#)

Next Section [572.27](#)

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*Please remember that the person listed above does not vote on bills. Direct all comments concerning legislation to State Legislators.*

*Last update: Tue Jan 28 13:52:42 CST 2003*

URL: [/IACODE/2003/572/26.html](http://IACODE/2003/572/26.html)

jhf

[EXHIBIT 41]

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

Browner  
Plaintiff/Petitioner

VS

Kaizer & Cavitt  
Defendant/Respondent

Case No 91020  
ORDER SETTING HEARING  
91476

Hearing on Merits Conference  
trial Settlement

is hereby scheduled for the 13 day of Feb 1998, at  
9:30 o'clock M. ~~at the court house~~

The Clerk shall notify all counsel of record.

Dated this 28 day of Jan, 1998

C. B. A.  
JUDGE OF THE DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT OF IOWA

[EXHIBIT 36]



## IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

JOHN A. BROWNER,

Plaintiff,

vs.

CHARLES A. RUHL, JR., KENT M.  
PILCHER, CAVITY COMPANY, L.C.,  
and KAIZEN COMPANY OF  
AMERICA, L.C.

Defendants.

LAW NO. 91476

RULING ON DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

FILED

98 FEB -3 AM 10:13

MARLENE R. NELSON  
CLERK OF DISTRICT COURT  
SCOTT COUNTY, IOWA

On January 28, 1997, a hearing was held on Defendants Cavity and Kaizen's (Defendants) Motion for Summary Judgment. Plaintiff John A. Browner (Browner) resists. Defendants appeared by their attorney Michael P. Byrne, Plaintiff Browner appeared pro se. The Court having reviewed the motion, pleadings, and arguments of counsel enters the following ruling.

Browner, D.D.S. owned property at 4508 Brady Street. Browner sold the property to Defendant Kaizen on March 28, 1995. See Exhibits E& F. Browner received a HUD-1 Closing statement on or about the time of the closing. See Exhibit B. Kaizen paid \$225,000 for the property and issued a check to Browner's attorney. See Exhibit D. On or about the same time, Browner agreed to purchase lots 5 and 6 located along Welcome Way from Defendant Kaizen. Browner entered into a real estate contract with Kaizen for purchase of said lots. The total cost of the lots and a building to be erected for Browner, including extras, was \$167,885. Browner made payments in the amount of \$88,957, which came from the sale proceeds of the property located at 4508 Brady Street. Browner was to pay off the balance of \$78,928, which included applicable insurance and taxes, in monthly installments.

EXHIBIT

B

Sanctions

Browner defaulted on his payments and a Notice of Forfeiture was sent to Browner. Browner cured the initial Notice of Forfeiture. Browner defaulted a second time and a second Notice of Forfeiture was sent to Browner. Browner failed to cure the default within the statutory 30 day period. On July 3, 1997, Magistrate Mary Howes-Davis forfeited all of Browner's interest in the Welcome Way property. Browner filed lawsuit No. 91020 (Browner I) wherein Browner sued to set aside the forfeiture and for an accounting on the amount owed on the real estate contract. In a ruling dated September 24, 1997, Judge Madden granted Defendants' motion for summary judgment regarding the forfeiture issue but found a genuine issue of material fact existed as to the amount due that was the basis of the forfeiture. Browner then filed a second lawsuit No. 91476 (Browner II) alleging entitlement to funds from the sale of the Brady Street property and for damages arising out of an alleged invalid real estate contract.

Pursuant to Rule 237 of the Iowa Rules of Civil Procedure, the Defendants have moved for summary judgment in Browner II arguing that no genuine issue of material fact exists regarding the sale of the property located at 4508 Brady Street by Browner to Kaizen. Summary judgment is proper if the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c) (1996); Stahl v. Preston Mut. Ins. Ass'n, 517 N.W.2d 201, 202 (Iowa 1994). On the other hand, summary judgment is inappropriate if a genuine issue as to any material fact exists or if reasonable minds could draw different inferences and conclusions from undisputed facts. Red Giant Oil Co. v. Lawlor, 528 N.W.2d 524, 528 (Iowa 1995). The burden of showing the nonexistence of a material fact rests with the moving party. Engstrom v. State, 461 N.W.2d 309 (Iowa 1990). In considering a motion for summary judgment, the Court is required to examine the entire record, including pleadings, depositions,

answers to interrogatories, admissions on file, and affidavits, in the light most favorable to the nonmoving party. Red Giant Oil Co. v. Lawlor, 528 N.W.2d at 528. In other words, "every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party." Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984).

In a summary judgment motion, "genuine" issue of fact means the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. Dickerson v. Mertz, 547 N.W.2d 208, 212 (Iowa 1996). A fact is "material" if it might affect the outcome of the suit, given the governing applicable law. Id. Hence, the Court, in rendering a decision on Defendant's motion for summary judgment, must determine if any facts exist where reasonable differences of opinion would affect the outcome of the case.


The Court finds that no genuine issue of material fact exists regarding the sale of property located at 4508 Brady Street by Browner to Kaizen. Browner agreed to sell his Brady Street property to Kaizen for \$225,000. Kaizen satisfied its obligation to Browner when it issued a check to Browner's attorney for \$225,000. See Exhibit D. The HUD-1 statement, Closing Memorandum, and the Warranty Deed demonstrate that Browner conveyed all of his interest in the Brady Street property to Kaizen on March 28, 1995. The question of whether liens on the Brady Street property were or were not satisfied at the time of closing is not relevant to the Court's analysis on these facts because the real estate agreement placed responsibility for satisfaction of any liens that remained upon Browner and were thus not the responsibility of Kaizen. See Exhibit F.

The Court further finds that Browner's allegations of an invalid real estate contract, based upon Charles Ruhl's failure to sign the closing agreement and settlement statement, are without

merit. Kent Pilcher, who was the Manager of Kaizen, signed the closing agreement and settlement statement on behalf of Ruhl & Ruhl. The mere fact that Kent Pilcher, rather than Charles Ruhl, signed the documents on behalf of Kaizen violates no section of the Iowa Code. As no genuine issue of material fact exists surrounding the validity of the sale of the Brady Street property, Defendants are entitled to judgment as a matter of law.

For the reasons stated above, it is therefore ORDERED that Defendants' Motion for Summary Judgment is hereby GRANTED.

Dated at Davenport, Iowa this 3 day of February, 1998

  
Edward B. deSilva Jr.  
District Court Judge  
Seventh Judicial District

FILED

98 FEB -3 AM 10:13

## IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

JOHN A. BROWNER,

Plaintiff,

vs.

CAVITY COMPANY, L.C.,  
and KAIZEN COMPANY OF  
AMERICA, L.C.

Defendants.

LAW NO. 91020

RULING ON DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENTM. J. NELSON  
CLERK OF DISTRICT COURT  
SCOTT COUNTY, IOWA

On January 28, 1997, a hearing was held on Defendants Cavity and Kaizen's (Defendants) Motion for Summary Judgment. Plaintiff John A. Browner (Browner) resists. Defendants appeared by their attorney Michael P. Byrne. Plaintiff Browner appeared by his attorney William Stengel. The Court having reviewed the motion, pleadings, and arguments of counsel enters the following ruling.

Browner, D.D.S. owned property at 4508 Brady Street. Browner sold the property to Defendant Kaizen on March 28, 1995. Kaizen paid \$225,000 for the property and issued a check to Browner's attorney. On or about the same time, Browner agreed to purchase lots 5 and 6 located along Welcome Way from Defendant Kaizen. Browner entered into a real estate contract with Kaizen for purchase of said lots. The total cost of the lots and a building to be erected for Browner, including extras, was \$167,885. Browner made payments in the amount of \$88,957, which came from the sale proceeds of the property located at 4508 Brady Street. Browner was to pay off the balance of \$78,928, which included applicable insurance and taxes, in monthly installments.

Browner failed to make the required payments between October 1995, and December 31, 1996. Defendants sent a Notice of Forfeiture to Browner. Browner cured the initial Notice of

~~EXHIBIT 35~~

EXHIBIT 35 R

Forfeiture. Browner defaulted a second time on payments due between January 1997- March 1997, totaling \$2,691.51. A second Notice of Forfeiture was sent to Browner. Browner failed to cure the default within the statutory 30 day period. On July 3, 1997, Magistrate Mary Howes-Davis forfeited all of Browner's interest in the Welcome Way property. Browner filed lawsuit No. 91020 (Browner I) wherein Browner sued to set aside the forfeiture and for an accounting on the amount owed on the real estate contract. In a ruling dated September 24, 1997, Judge Madden granted Defendants' motion for summary judgment in part with respect to the forfeiture issue, but found a genuine issue of material fact existed as to the amount due that was the basis of the forfeiture.

In its motion for summary judgment, the Defendants argue that no genuine issue of material fact exists regarding the amount listed as due on the forfeiture. Defendants argue that the Court's consideration of its second motion for summary judgment is entirely appropriate in light of additional documentation that has been provided, but which was not previously before the Court. Specifically, Defendants argue that the documentation demonstrates that Browner owed Kaizen a balance of nearly \$78,000 on the Welcome Way property after proceeds from the sale of the Brady Street property were applied to the real estate transaction. Plaintiff Browner argues that the Court must take judicial notice of Judge Madden's previous ruling which held that a genuine issue of material fact existed regarding the amount listed on the forfeiture. Browner concludes that res judicata bars further consideration of Kaizen's motion.

Pursuant to Rule 237 of the Iowa Rules of Civil Procedure, the Defendants have moved for summary judgment in Browner II arguing that no genuine issue of material fact exists regarding the sale of the property located at 4508 Brady Street by Browner to Kaizen. Summary

judgment is proper if the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c) (1996); Stahl v. Preston Mut. Ins. Ass'n, 517 N.W.2d 201, 202 (Iowa 1994). On the other hand, summary judgment is inappropriate if a genuine issue as to any material fact exists or if reasonable minds could draw different inferences and conclusions from undisputed facts. Red Giant Oil Co. v. Lawlor, 528 N.W.2d 524, 528 (Iowa 1995). The burden of showing the nonexistence of a material fact rests with the moving party. Engstrom v. State, 461 N.W.2d 309 (Iowa 1990). In considering a motion for summary judgment, the Court is required to examine the entire record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, in the light most favorable to the nonmoving party. Red Giant Oil Co. v. Lawlor, 528 N.W.2d at 528. In other words, "every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party." Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984).

In a summary judgment motion, "genuine" issue of fact means the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. Dickerson v. Mertz, 547 N.W.2d 208, 212 (Iowa 1996). A fact is "material" if it might affect the outcome of the suit, given the governing applicable law. *Id.* Hence, the Court, in rendering a decision on Defendant's motion for summary judgment, must determine if any facts exist where reasonable differences of opinion would affect the outcome of the case.

The Court holds that the additional documentation provided by the Defendants demonstrates that no genuine issue of *material* fact exists that might affect the outcome of the suit, given applicable law (emphasis added). In the Defendants' first motion for summary judgment, the Court determined that a genuine issue of material fact existed as to the amounts

listed as due in the forfeiture. While Browner has not suggested what he believes to be the correct amount owed, Browner does allege that the \$2691.51 listed by the Defendants in the Notice of Forfeiture is incorrect. The issue before the Court is whether Browner may rely on a discrepancy between the amount listed as owed in a Notice of Forfeiture and the actual amount owed as a basis for either setting aside the forfeiture or bringing an action for breach of contract for damages. Even assuming that the amount listed in the Notice of Forfeiture did not represent the actual amount Browner owed Kaizen on the real estate contract, the Court finds that Browner is not entitled to set aside the forfeiture or bring an action for damages against the Defendants.

In Gaston v. Horn, 138 N.W. 925 (Iowa 1912), the Court refused to set aside a forfeiture when the notice stated that the vendee owed \$500 when actually only \$185 was due. In Hampton Farmers Co-op. Co. v. Fehd, 133 N.W.2d 872, 875 (Iowa 1965), the Court reaffirmed its decision in Gaston holding that the fact that a vendor may have asked for something in the notice of forfeiture to which he was not entitled will not defeat the forfeiture so long as it contains one matter on which the vendor is entitled to give notice of forfeiture. The rule articulated by the Iowa Supreme Court is clear: in the event notice of forfeiture makes demand for more than that to which the vendor is entitled, such excessive demand will not invalidate the forfeiture. Id.

The documentation provided by the Defendants clearly establishes that Browner owed a principal balance of \$78,928 on the real estate contract involving lots 5 and 6. Browner agreed to make monthly payments on the balance which included an additional payment for insurance and taxes. Browner himself does not pretend to dispute that he failed to make the required payments from January 1997- March of 1997. In a prior ruling, Magistrate Davis held that Browner's



attempted tender of the amount due was untimely. The default is conceded. It was specified in the notice (that at least some amount was owed for failure to make the required payments for three months) and was sufficient to entitle vendors to invoke a forfeiture. Even assuming Kaizen overstated the requirements to cure the default, such an act is not fatal to notice and cannot serve as a basis for setting aside a forfeiture.

The Court also holds that Browner is not entitled to bring an action for breach of contract or for damages arising out of the forfeiture of the Welcome Way property even assuming that the amount listed in the Notice of Forfeiture did not represent the actual amount Browner owed Kaizen on the real estate contract. Vendors, such as Kaizen, have various remedies when a vendee, such as Browner, is in default under a real estate contract. Vendors have a right to elect whether (1) to keep good their tender of performance, demand the balance of the purchase price and sue for specific performance; (2) to terminate the contract because of the vendee's breach, keep their land and sue for damages for the breach; (3) rescind the contract in toto; or (4) to enforce a forfeiture under the statute. Pierce v. Farm Bureau Mutual Ins. Co., 548 N.W.2d 551, 556 (Iowa 1996). This election of potentially available remedies belongs to the vendor and not to the defaulting vendee. On these facts, Browner was in default for failure to make required payments. As the party in default, Browner may not bring an action against the vendor Kaizen for breach of contract or for damages. Defendants are entitled to judgment as a matter of law.

For the reasons stated above, it is therefore ORDERED that Defendants' Motion for Summary Judgment is hereby GRANTED.

Dated at Davenport, Iowa this 3 day of February, 1998



Edward B. deSilva Jr.  
District Court Judge  
Seventh Judicial District

IN THE DISTRICT COURT OF IOWA IN AND FOR SCOTT COUNTY, IOWA

PLAINTIFF(S)

JOHN A. BROWNER

(Name)

308 A. WEST 52nd STREET

(Address)

DAVENPORT, IOWA 52806

(Address)

VS

DEFENDANT(S)

CHARLES RUTH JR

(Name)

5111 Utica Ridge Rd DAV. Ia

(Address)

R. W. H. AND RUTH RESIDENCE

(Name)

1228 Middle Rd Bettendorf, Iowa(Address) Att Candice Ruth

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY NOTIFIED that the above names plaintiff(s) demand(s) from you the amount of \$600.00 based on SAVINGS MONEY 442087 OCT 5, 1994 WITNESS Agreement, not paid THIS Account (state briefly basis for the demand.

UNLESS YOU APPEAR by completing and filing the attached appearance and answer form with the Clerk of Court at 416 West 4th Street, Scott County Courthouse in Davenport, Iowa 52801, WITHIN 20 DAYS AFTER SERVICE OF THIS ORIGINAL NOTICE UPON YOU, judgment shall be rendered against you upon Plaintiff's claim together with interest and court costs.

IF YOU DENY THE CLAIM AND APPEAR by filing the attached appearance and answer WITHIN 20 DAYS AFTER SERVICE OF THIS ORIGINAL NOTICE UPON YOU, you will then receive notification from the Court Administrator's office of the place and time assigned for hearing.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 326-8607 (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942)

JOHN A. BROWNER

Plaintiff(s)

308 A. WEST 52nd St DAV. Ia 52806

Address

563-386-3879

Phone (Home and Business)

## JUDGMENT ENTRY:

IT IS HEREBY ORDERED THAT JUDGMENT BE ENTERED AGAINST \_\_\_\_\_, (Defendant(s) Plaintiff(s) in the amount of \$\_\_\_\_\_ with interest at the rate of \_\_\_\_\_ percent from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and Attorney Fees in the amount of \$\_\_\_\_\_ plus Court Costs in the amount of \$\_\_\_\_\_.

IT IS FURTHER ORDERED THAT the foregoing judgment be paid at the rate of \$\_\_\_\_\_ per \_\_\_\_\_ (month/week).

Date \_\_\_\_\_

Magistrate \_\_\_\_\_

EXH. b, + 46

FILED  
ORIGINAL NOTICE  
ACTION FOR MONEY JUDGMENT

02 AUG -9 PM 4:02

SMALL CLAIM NO

MARLENE K. NELSON  
CLERK OF DISTRICT COURT  
SCOTT COUNTY, IOWA

SC125231

Make sure that your correct mailing address and number appear on this form. If you cannot be contacted, you may not receive trial or continuance notices and judgment may be entered against you, if you fail to appear.

2CM



REALTOR®

AGREEMENT TO PURCHASE REAL ESTATE  
for use only by Members of the  
GREATER DAVENPORT BOARD OF REALTORS®  
THIS IS A LEGALLY BINDING CONTRACT

42087

Date October 5, 1994To Dr. John A. and Shirley A. BrownerThe undersigned (Purchaser), Ruhl Development Company, LLC hereby offers to purchasethe total sum of \$ See Addendum A the real estate located at 4508 North Brady Street, Davenport, Iowa  
and described as follows: consisting of 22,491 square feet, more or less, as shown on Exhibit A

upon the following terms and conditions:

(a) **SALE SUBJECT TO FINANCING:** This Agreement is subject to the Purchaser obtaining \_\_\_\_\_ of an interest rate not to exceed \_\_\_\_\_  
loan commitment on the subject property in the amount of \$ \_\_\_\_\_ to obtain such commitment for financial  
for a period of not less than \_\_\_\_\_ years. Purchaser shall be given until \_\_\_\_\_ to obtain such commitment for financial  
if, after making reasonable efforts to obtain such a loan, Purchaser is unable to secure such financing, this offer shall become void. Purchaser is  
make application for such financing within \_\_\_\_\_ days after this agreement has been finally accepted by both parties.

(b) **CASH** by payment of the sum of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ cash \_\_\_\_\_ check, submitted herewith, to be held  
trust by \_\_\_\_\_ and the balance of the purchase price upon delivery of a Warranty Deed as herein  
provided.

(c) **CONTRACT** by payment of the sum of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ cash \_\_\_\_\_ check, submitted herewith, to be held  
trust by \_\_\_\_\_ and \$ \_\_\_\_\_ upon the execution of a formal contract in which Purchaser  
agrees to pay the remaining balance of \$ \_\_\_\_\_ at the rate of \$ \_\_\_\_\_ or more per month (interest in addition  
including interest) until the entire purchase price together with interest at \_\_\_\_\_ % per annum is paid in full.

(d) **THE EARNEST MONEY** of \$ 1,000.00 in the form of \_\_\_\_\_ cash \_\_\_\_\_ check, submitted herewith and held  
trust by Ruhl & Ruhl Realtors, Inc., is part of the cash at closing. In the event any contingency is not met by the date contained  
such contingency, the Seller recognizes the earnest money will be returned to the Purchaser and this agreement shall be void. By Iowa law, if there is  
unresolved dispute over any contingency, the Broker must hold the earnest money and not disburse except by the provisions of the law. Seller is  
Purchaser agree to indemnify, defend and hold harmless the escrow agent from and against any and all liabilities and claims arising out of the duties  
escrow agent.

of **OTHER TERMS** See Addendum and Exhibits A and B.

1. Seller shall furnish to Purchaser satisfactory evidence of title in conformity with this agreement, and the law of the State of Iowa, and in accordance  
with the title standards of the Iowa and Scott County Bar Associations. Title shall be made free and clear of all liens and encumbrances not here  
specifically waived or agreed to be assumed by Purchaser. The conveyance of title shall be by way of Warranty Deed. Seller's Abstract of Title shall  
submitted to Purchaser's Attorney for examination as soon after this date as is reasonably possible. Any objections to title raised by Purchaser  
Attorney shall be made in writing as soon thereafter as is reasonably possible, so that the same may be cured on or before date of closing.

2. Closing shall be on or before April 30, 1995. Possession shall be given at closing in accordance with

3. All real estate taxes shall be paid or prorated between Purchaser and Seller to the date of closing.

4. Special assessments to be levied for improvements completed, or where **NOTICE OF RESOLUTION** for improvements is in effect previous to  
date here of yet levied, shall be paid by Seller, except

5. Seller warrants that the heating and air conditioning systems, plumbing and electrical systems and all other mechanical equipment included as  
of the purchase price, will be in working order as of date of possession, with the following exceptions:

The Purchaser or his authorized agent shall be permitted to make an inspection of the property prior to possession or closing, whichever is sooner. Seller  
shall deliver the property in the same condition as of the date of the agreement.

6. **Wood Infestation Inspection:** This agreement is subject to a wood infestation inspection of the subject property by a licensed pest control agent  
to be paid for by the \_\_\_\_\_ if active infestation or damage due to pest infestation is discovered. Seller is  
have the option of either having the property treated for infestation by a licensed pest exterminator and having any damage repaired or, declining  
agreement void.

7. All personal property that integrally belongs to or is a part of the real estate, whether attached or detached, such as light fixtures, window shades,  
rider, rods, brackets, awnings, storm windows and doors, window, doors and porch screens, permanently installed floor coverings, permanently installed  
heating and cooling equipment, garage door openers and transmitters, outside television towers and antennas, fencing, trees, shrubs, plants and  
other fixtures shall be considered a part of the real estate included in this sale, except:

8. If Purchaser herein fails to fulfill this agreement after the same has been accepted by Seller, Purchaser shall pay Seller, as liquidated damages,  
sum equal to the amount of the real estate brokerage fee, reasonable attorney's fees, loss of rent, and any additional expenses incurred by Seller  
because of Purchaser's failure to perform and the earnest money herein shall be forfeited to the extent of, or to apply on, such damages.

9. It is further agreed that if Seller fails to fulfill this agreement after acceptance, Seller will pay the real estate brokerage fee in full.

10. Seller shall maintain existing insurance until closing. Purchaser may purchase additional insurance.

11. It is understood that no representations made by the Broker or Salesperson in the negotiation of this sale are being relied upon unless incorporated  
in writing. Broker and Salesperson make no representations or warranties either express or implied as to the physical or mechanical condition  
of the property, either real or personal.

12. Parties acknowledge that AGENCY disclosures have been made and signed prior to signing of this purchase agreement. The Broker  
Broker's agents, employees, and associates must respond to all questions of the parties accurately and honestly and must disclose all **MATERIAL**  
**DEFECTS** about which they have knowledge, but are not required to discover hidden defects in the property or give advice on matters outside the scope  
of their real estate license.

13. If this agreement is not accepted by Seller on or before upon presentation, it shall become null and void and the earnest money  
made herewith shall be repaid to Purchaser without liability on the part of the Broker or Salesperson to either party.

14. Purchaser grants/does not grant permission for a credit report.

15. Seller hereby agrees to pay a brokerage fee to the listing broker as per the listing contract. Ruhl & Ruhl Realtors, Inc.

Member - Greater Davenport Board of REALTORS®

PURCHASER Ruhl Development Company, LLC

Social Security # Tax ID No. 42-1915000

hereby accept the foregoing agreement this 5

SELLER Dr. John A. Browner

Salesperson - Signature

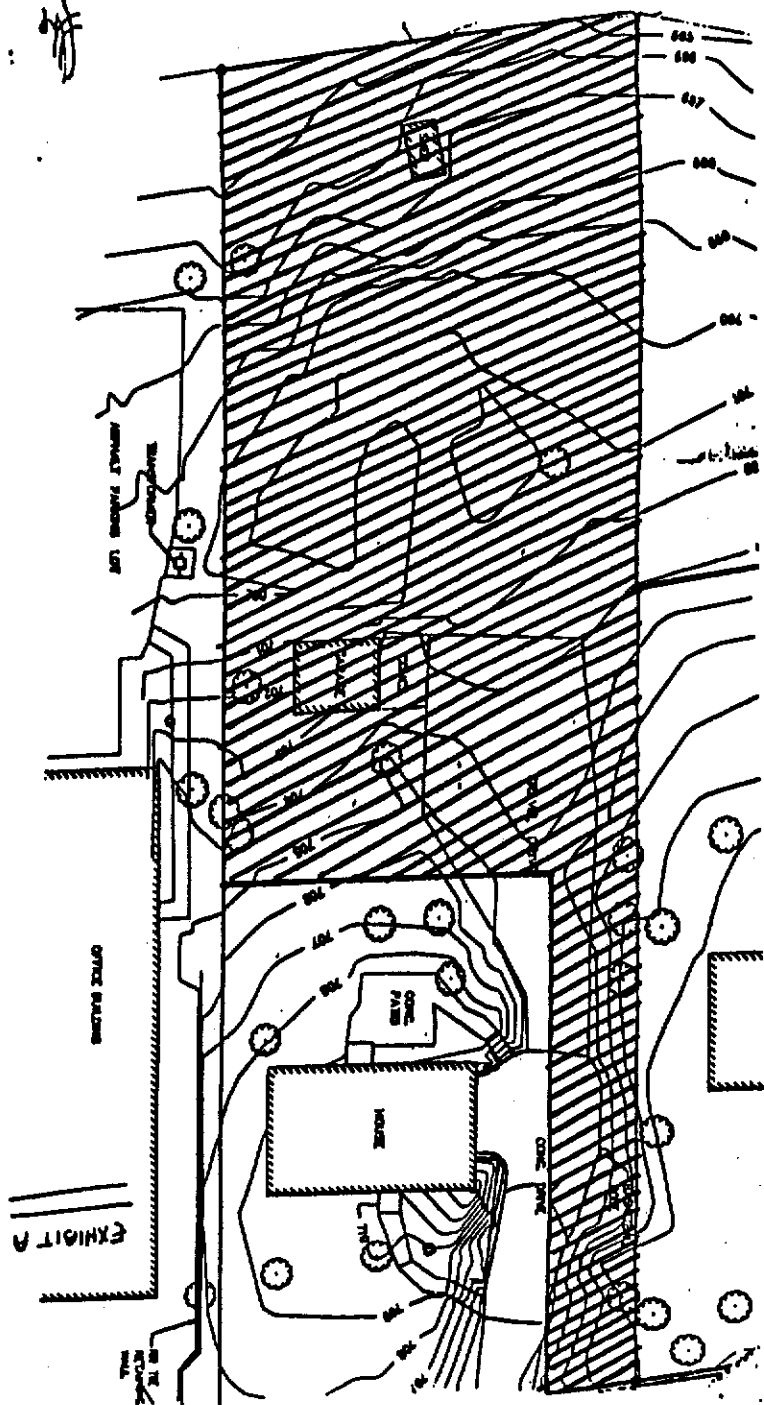
PURCHASER Ruhl Development Company, LLC

Social Security # President

day of October 1994

SELLER Dr. John A. Browner

[8.146.15 42087]



## ADDENDUM B

In reference to the purchase agreement covering the real property commonly known as 4508 North Brady Street, Davenport, Iowa, as shown in Exhibit A, dated October 3, 1994 between Dr. John A. and Shirley A. Browner (Seller) and Ruhl Development Company, LLC (Purchaser), the undersigned Parties hereby agree as follows:

1. Seller acknowledges that Purchaser has disclosed he is a licensed real estate broker in the states of Iowa and Illinois.
2. This agreement is expressly conditional to Purchaser securing a commitment from an identified party for a building to be developed on subject property. In the event such commitment is not received on or before sixty (60) days from acceptance of this agreement, Purchaser, at its option, can cancel its obligations of this purchase and this agreement shall become null and void and the earnest money shall be refunded to Purchaser.
3. Seller agrees, upon acceptance of this agreement, to immediately order an abstract continuation for subject property at Seller's expense and deliver continued abstract to Purchaser. Upon Purchaser's receipt of the continued abstract, Purchaser shall order a title opinion at Purchaser's expense from a recognized Iowa attorney. If in the event the title opinion discloses any encumbrances, easements, or other Purchaser objections, Purchaser shall provide written notice to Seller. The Seller shall have thirty (30) days after written receipt of written objections to correct any objections to the title. If such objections cannot be cured by Seller within thirty (30) days, Purchaser may elect to terminate this agreement and the earnest money shall be refunded to Purchaser.
4. The Seller grants to the Purchaser and its agents the right to enter upon the Property at any reasonable time for any lawful purpose, including but not limited to making land surveys, engineering studies, environmental tests, soil tests and any other test, study or inspection at the sole cost and expense of Purchaser in connection with the proposed commercial development of the Property. Such right of entry shall be exercised in a reasonable manner, and the Purchaser hereby agrees to indemnify and hold Seller harmless from all costs, expenses and damages, by reason of such entry. Any existing survey in Seller's possession shall be furnished to Purchaser within ten (10) days of the signing of this agreement.
5. This agreement is expressly conditioned upon zoning, platting and plan approval of the Property for Purchaser's intended use satisfactory to the Purchaser. If subject property is presently not zoned for Purchaser's intended use, Seller shall sign an application to have the Property plan approved and rezoned for retail and office use. Seller shall cooperate with Purchaser in securing any needed rezoning, plan approval or permits, and in processing to completion the application and all documents relating thereto. The application shall be made in the name of Seller and Purchaser or as otherwise required under the applicable governing ordinance or regulation. Purchaser shall select the attorney, land planner, engineer, architect or other representative to prepare and present the zoning plan and building permit application and to present the same at all hearings. All expenses, fees and costs to secure such zoning shall be paid by Purchaser. Both Seller and Purchaser agree that the Purchaser's attorney may represent both parties for such zoning hearings, provided Seller approves Purchaser's selection of attorney.
6. In the event Purchaser finds soil conditions, environmental conditions, vehicular access, availability of utilities, municipal approvals, or any other conditions unsuitable for Purchaser's intended development, Purchaser, at its option, can terminate this agreement on or before closing and the earnest money shall be refunded to Purchaser.
7. See Exhibit B.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned purchase agreement.

## PURCHASER:

RUHL DEVELOPMENT COMPANY, LLC

By: Charles A. Ruhl, Jr.

Charles A. Ruhl, Jr., President

Date: 10-6-94

## SELLER:

DR. JOHN A. BROWNER

By: Dr. John A. Browner

Date: 10-10-94

SHIRLEY A. BROWNER

By: Shirley A. Browner

Date: 10-10-94

## ADDENDUM B

In reference to the purchase agreement covering the real property commonly known as 4508 North Brady Street, Davenport, Iowa, as shown in Exhibit A, dated October 5, 1994 between Dr. John A. and Shirley A. Browner (Seller) and Ruhl Development Company, LLC (Purchaser), the undersigned Parties hereby agree as follows:

1. Seller acknowledges that Purchaser has disclosed he is a licensed real estate broker in the states of Iowa and Illinois.
2. This agreement is expressly conditional to Purchaser securing a commitment from an identified party for a building to be developed on subject property. In the event such commitment is not received on or before sixty (60) days from acceptance of this agreement, Purchaser, at its option, can cancel its obligations of this purchase and this agreement shall become null and void and the earnest money shall be refunded to Purchaser.
3. Seller agrees, upon acceptance of this agreement, to immediately order an abstract continuation for subject property at Seller's expense and deliver continued abstract to Purchaser. Upon Purchaser's receipt of the continued abstract, Purchaser shall order a title opinion at Purchaser's expense from a recognized Iowa attorney. If in the event the title opinion discloses any encumbrances, easements, or other Purchaser objections, Purchaser shall provide written notice to Seller. The Seller shall have thirty (30) days after written receipt of written objections to correct any objections to the title. If such objections cannot be cured by Seller within thirty (30) days, Purchaser may elect to terminate this agreement and the earnest money shall be refunded to Purchaser.
4. The Seller grants to the Purchaser and its agents the right to enter upon the Property at any reasonable time for any lawful purpose, including but not limited to making land surveys, engineering studies, environmental tests, soil tests and any other test, study or inspection at the sole cost and expense of Purchaser in connection with the proposed commercial development of the Property. Such right of entry shall be exercised in a reasonable manner, and the Purchaser hereby agrees to indemnify and hold Seller harmless from all costs, expenses and damages, by reason of such entry. Any existing survey in Seller's possession shall be furnished to Purchaser within ten (10) days of the signing of this agreement.
5. This agreement is expressly conditioned upon zoning, platting and plan approval of the Property for Purchaser's intended use satisfactory to the Purchaser. If subject property is presently not zoned for Purchaser's intended use, Seller shall sign an application to have the Property plan approved and rezoned for retail and office use. Seller shall cooperate with Purchaser in securing any needed rezoning, plan approval or permits, and in processing to completion the application and all documents relating thereto. The application shall be made in the name of Seller and Purchaser or as otherwise required under the applicable governing ordinance or regulation. Purchaser shall select the attorney, land planner, engineer, architect or other representative to prepare and present the zoning plan and building permit application and to present the same at all hearings. All expenses, fees and costs to secure such zoning shall be paid by Purchaser. Both Seller and Purchaser agree that the Purchaser's attorney may represent both parties for such zoning hearings, provided Seller approves Purchaser's selection of attorney.
6. In the event Purchaser finds soil conditions, environmental conditions, vehicular access, availability of utilities, municipal approvals, or any other conditions unsuitable for Purchaser's intended development, Purchaser, at its option, can terminate this agreement on or before closing and the earnest money shall be refunded to Purchaser.
7. See Exhibit B.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned purchase agreement.

## PURCHASER:

RUHL DEVELOPMENT COMPANY, LLC

By: Charles A. Ruhl, Jr.  
Charles A. Ruhl, Jr., President  
Date: 10-6-94

## SELLER:

DR. JOHN A. BROWNER

By: Dr. John A. Browner  
Date: 10-10-94

SHIRLEY A. BROWNER

By: Shirley A. Browner  
Date: 10-10-94

**EXHIBIT B****WARRANTIES AND COVENANTS****A. Seller represents, covenants and warrants that:**

1. There are, and will be at time of closing, no leases, tenancies, contracts or agreements in effect with respect to the Property.
2. To the best of Seller's knowledge and belief, there are no condemnation proceedings pending or contemplated which would affect all or any portion of the Property.
3. The Property has never been used to generate, manufacture, refine, transport, treat, produce, store, handle, transfer, process, transport or dispose of "Hazardous Material or Substances" or "Hazardous Waste" or "Substances Hazardous to the Environment" as terms are defined in the U.S.C. Section 9601 et seq., or other applicable state or federal laws or regulations. The Property has never been used as a landfill, dumping ground nor like repository. There are no underground storage tanks on the Property.
4. The Property has open and unobstructed legal access through approved curb cuts at grade level over land owned in fee to and from Brady Street for vehicular ingress and egress.
5. Seller owns the Property in fee simple absolute and has full power to sell and convey the Property in accordance with the terms and conditions of this Agreement.
6. The signatory hereof executes this Agreement as a duly authorized officer of Seller and has all necessary and appropriate authority to enter into and complete this transaction.

**B. Seller hereby covenants to Purchaser, from and after the date hereof, as follows:**

1. Seller will neither execute any new lease or modify any existing lease without Purchaser's prior written consent.
2. Seller will keep the Property fully insured against casualty and public liability.

 Purchaser  
 Seller



CHESTER J. CULVER  
IOWA SECRETARY OF STATE



LUCAS BUILDING, FIRST FLOOR  
DES MOINES, IOWA 50319

September 16, 2003

Patrick W. Driscoll  
Stanley, Lande, & Hunter  
900 Firstar Bank Bldg  
201 W Second St.  
Davenport IA 52801

Dear Mr. Driscoll:

In March 1998, the Secretary of State's Office received a notary complaint against you from Dr. John A. Browner. On February 5, 2001, the Secretary of State's Office proposed an informal settlement agreement. On August 13, 2001 you responded with a counter offer to settle.

Since that time, Dr. Browner has filed a great deal of additional information with the Secretary of State's Office and the State Ombudsman's Office. Upon review of the entire file, the Secretary of State's Office accepts your offer of settlement dated August 13, 2001 conditioned upon you attending a notary course. We currently have a courses scheduled for your area in October. I have enclosed a copy of the information on the upcoming courses.

Upon completion of notary training this matter shall be resolved.

Thank your for your cooperation on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Mandernach", is written over a horizontal line.

Steven Mandernach,  
Director of Business Services

[Exhibit 45]

Rpt ID : CPW200 Iowa Court Information System Page: 1  
 Rpt Date: 09-JUL-04 SCOTT  
 Rpt Time: 04:08 PM Clerk of Court - CARLIN, ACTING, JULIE C  
 Rpt Beg : 21-JUL-97 Combined General Docket  
 Rpt End : 09-JUL-04

## ----- Case Name -----

Case 07-82-1- -LN-LN010635  
 Title BROWNER, JOHN VS RUHL, CHARLES ET AL

## ----- Case Header -----

Sub-Type Mechanic's Nature  
 Initiated 21-JUL-97 Milestone DISPOSED Mil Dt 24-JUL-97  
 Judge Tp Jud Dt Agency Pin  
 Agency Name

## ----- Case Closing -----

Disposition CLOSED Disp Dt 21-JUL-97  
 Reopened Dt Microfilm Reference  
 Judge Tp UNKNOWN Judge Pin CLERKHAND  
 Judge Name HANDLED BY CLERK

## ----- Case Long Title -----

In the District Court of Iowa, In and For SCOTT County  
 JOHN A. BROWNER )  
 )  
 )  
 )  
 )  
 )  
 Plaintiff(s)  
 vs.  
 )  
 CHARLES RUHL )  
 KAIZEN COMPANY OF AMERICA )  
 CAVITY )  
 )  
 Defendant(s)

## ----- Litigants -----

Role	Name
PROPERTY CO-OWNER	RUHL, KAIZEN, CAVITY
Litigant Pin SC1088023	
PLAINTIFF	BROWNER, JOHN ANTHONY
Litigant Pin SC1212019	
DEFENDANT	RUHL JR, CHARLES
Litigant Pin SC1038073	
DEFENDANT	CAVITY COMPANY LC
Litigant Pin SC1083885	
DEFENDANT	KAIZEN COMPANY OF AMERICA LC
Litigant Pin SC1083886	

Rpt ID : CPW200 Iowa Court Information System Page: 2  
Rpt Date: 09-JUL-04 SCOTT  
Rpt Time: 04:08 PM Clerk of Court - CARLIN, ACTING, JULIE C  
Rpt Beg : 21-JUL-97 Combined General Docket  
Rpt End : 09-JUL-04

## ----- Case Name -----

Case 07-82-1- -LN-LN010635  
Title BROWNER, JOHN VS RUHL, CHARLES ET AL

## ----- Papers Filed -----

Filed Date / Time Seq Event Reference St

21-JUL-97 10:40 AM 1 MLNF C  
Description MECHANICS LIEN FILING

24-JUL-97 08:00 AM 1 OTOT C  
Description OTHER EVENT  
Comment(s) NOTICE OF MECHANIC'S LIEN SENT TO  
LANE & WATERMAN FOR KAIZEN & CAVITY  
CHARLES RUHL MAILED

24-JUL-97 10:45 AM 0 NONO C  
Description COMPUTER GENERATED NOTICE  
Comment(s) NOTICE OF MECHANIC'S LIEN (CIVIL)

## ----- Judgment/Lien Detail -----

Date	Time	Sq	St Date	St Judgment	Status
07/21/97	10:40 AM	1	07/24/97	N	NONE
Seq # 1601				Index Status A	Date 24/07/97
Town DAVENPORT				Addition	FOUR SIX STREET 2ND ADDITION
Lot 5	Outlot	Block		County Cd	82
Text				Case Cd	M

Seq # 1602				Index Status A	Date 24/07/97
Town DAVENPORT				Addition	FOUR SIX STREET SECOND ADDITION
Lot 6	Outlot	Block		County Cd	82
Text				Case Cd	M

Page: 3

Rpt ID : FM8070 Iowa Court Information System  
 Rpt Date: 09-JUL-04 SCOTT  
 Rpt Time: 04:08 PM Clerk of Court - JULIE C CARLIN, ACTING  
 Rpt Beg : 21-JUL-97 Case Financial Management  
 Rpt End : 09-JUL-04 Financial Summary

Case ID : 07-82-1- -LN-LN010635 Title: BROWNER, JOHN VS RUHL, CHARLES ET AL  
 Obligor PIN: Name :  
 Obligee PIN: Name :  
 Payor PIN : Name :  
 Payee PIN : Name :

Financial Summary				Owed Amount	Paid Amount	Due Amount
Filed Dt	Filed Tm	Sq F-Cd	Description			
21-JUL-97	10:40 AM	1 CA00 C	LIENS, ENTERING/ENDORSEM	\$10.00	\$10.00	\$0.00
21-JUL-97	08:00 AM	1 MC00 M	JUDGEMENTS:	\$210,000.00	\$0.00	\$210,000.00

Financial Totals				Owed Amount	Paid Amount	Due Amount
Description						
Court Costs				\$10.00	\$10.00	\$0.00
All Other				\$210,000.00	\$0.00	\$210,000.00
** Grand Totals				\$210,010.00	\$10.00	\$210,000.00

07821 LNLN010635

Rpt ID : FM8080  
 Rpt Date: 09-JUL-04  
 Rpt Time: 04:08 PM  
 Rpt Beg: 21-JUL-97  
 Rpt End: 09-JUL-04

Iowa Court Information Systems  
 SCOTT  
 Clerk of Court - CARLIN, ACTING, JULIE C  
 Case Financial Management  
 Financial Detail

Page: 4

Case Id : 07-82-1- -LN-LN010635 Title: BROWNER, JOHN VS RUHL, CHARLES ET AL

Receipt Nbr: 476836

Fin				Receipt			Disbursement				
AR-F C Fin Cd Desc	Date	No	Oblgr PIN Oblgr Name	Amount	Date	No	Oblge PIN Oblge Name	Amount			
AP-F C Fin Cd Desc	F-T	T-C Batch	Payor PIN Payor Name		F-T T-C	Batch	Payee PIN Payee Name				
CA01 C LIENS, ENTERING/E	24-JUL-97	476836	SC1212019 BROWNER,JO	\$10.00	01-AUG-97	2105	STATEIOWA STATE OF I	\$10.00			
CA02 C LIENS, ENTERING/E	CHK	STD RECCV	SC1212019 BROWNER,JO		CHK STD	RECCV	STATEIOWA STATE OF I				
** Receipt Totals				\$10.00					\$10.00		
				\$10.00					\$10.00		
** Grand Total											